

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TELEBRANDS CORP.,

Plaintiffs,

-against-

ECOM VENTURE LLC d/b/a ECOM
AUTOMIZED a/k/a ECOM-AUTOMIZED,

Defendant.

24-CV-6317 (AT) (RFT)

ORDER

ROBYN F. TARNOFSKY, United States Magistrate Judge:

Plaintiff filed its complaint on August 21, 2024. (See ECF 1.) Defendant Ecom Venture LLC (“Ecom”) was timely served with the Corrected First Amended Complaint (“AC”) on September 18, 2024, and its answer was due on October 9, 2024. (See ECF 29.) Ecom did not answer the AC.¹

Plaintiff began the process of filing for a default judgment against Ecom on December 5, 2024. (See ECF 34, Proposed Certificate of Default; ECF 35, Declaration of Kerry Brownlee in Support of Certificate of Default.) The Clerk of Court issued a Certificate of Default on the same day. (See ECF 37.)

Accordingly, it is ORDERED that Plaintiff shall complete the process of requesting a default judgment by filing on the docket, no later than **April 4, 2025**, the following documents:

1. Proposed order to show cause for default judgment.
2. Proposed Findings of Fact and Conclusions of Law. Plaintiffs shall file their Proposed Findings of Fact and Conclusions of Law, which must include:

¹ All other Defendants have been voluntarily dismissed from the case. (See ECF 33, Notice of Voluntary Dismissal.)

- a. The basis for entering a default judgment. The Proposed Findings of Fact and Conclusions of Law must include a description of the method and date of service of the summons and AC and the procedural history beyond service. Before a judgment can be entered and damages or other relief can be awarded, even after default, the Court must be satisfied that it has personal jurisdiction over Defendants. *See Sheldon v. Plot Commerce*, No. 15-cv-5885 (CBA) (CLP), 2016 WL 5107072, at *6 (E.D.N.Y. Aug. 26, 2016) (“Personal jurisdiction is a necessary prerequisite to entry of a default judgment.”), *report and recommendation adopted*, No. 15-cv-5885 (CBA) (CLP), 2016 WL 5107058 (E.D.N.Y. Sept. 19, 2016); *Lliviganay v. Cipriani 110 LLC*, No. 09-cv-0737 (LAK), 2009 WL 1044606, at *1 (S.D.N.Y. Apr. 14, 2009) (lack of proof of proper service “is an independent obstacle to a default judgment”); *Orellana v. World Courier, Inc.*, No. 09-cv-576 (NGG) (ALC), 2010 WL 3861002, at *2 (E.D.N.Y. Aug. 24, 2010) (denying motion for default judgment where there was “no indication on the docket that [defendant] has been served with the Complaint or any subsequent filings in this action, including the instant motion for default judgment against him”), *report and recommendation adopted*, No. 09-cv-576 (NGG) (ALC), 2010 WL 3861013 (E.D.N.Y. Sept. 28, 2010). Plaintiff is advised that failure to adequately establish service on Ecom may result in denial of Plaintiff’s request for a default judgment against that entity.
- b. The basis for the Court’s exercise of subject matter jurisdiction. The Court must be satisfied that it has subject matter jurisdiction over the action. *See Sheldon*, 2016 WL 5107072, at *9 (citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83,

93-102 (1998)) (“[C]ourts may not reach the merits of a claim before establishing subject matter jurisdiction.”).

- c. The basis for Ecom’s Liability. The Court must also be satisfied that the well-pleaded allegations contained in the AC, which are taken as true after default, are sufficient to state a claim against Ecom. *See Sheldon*, 2016 WL 5107072, at * 5 (citing *Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009)) (“It remains the plaintiff’s burden to demonstrate that the uncontroverted facts establish the defendant’s liability on each cause of action asserted.”); *see also Bricklayers & Allied Craftworkers Local 2, Albany, N.Y. Pension Fund v. Moulton Masonry & Const., LLC*, 779 F.3d 182, 187 (2d Cir. 2015) (“[T]he court may, on Plaintiff’ motion, enter a default judgment if liability is established as a matter of law when the factual allegations of the complaint are taken as true.”). The Proposed Findings of Fact and Conclusions of Law must demonstrate, with reference to specific factual allegations contained in the AC, that those allegations are sufficient to establish Ecom’s liability for each cause of action asserted against it.

- d. The basis for and calculation of all damages and other monetary relief permitted in connection with a judgment against Ecom. The Proposed Findings of Fact and Conclusions of Law shall contain a concluding paragraph that succinctly summarizes the exact dollar amount of the damages (or other monetary relief) sought, as well as the precise terms of any non-monetary relief sought from Ecom.

3. Evidentiary Support for Claimed Actual Damages. Plaintiff must provide evidence sufficient to permit the Court to “ascertain the amount of damages with reasonable certainty.”

Credit Lyonnais Sec. (USA), Inc. v. Alcantara, 183 F.3d 151, 155 (2d Cir. 1999). Consequently, if Plaintiff seeks actual (as opposed to statutory or nominal) damages, the Proposed Findings of Fact and Conclusions of Law must be supported by one or more declarations or affidavits on personal knowledge, which may attach and authenticate any documentary evidence needed to establish the proposed damages. All evidence submitted in support of Plaintiff's request for damages or other relief must be in admissible form. Each proposed finding of fact shall be followed by a citation to the paragraph of the declaration and/or page of documentary evidence that supports each such proposed finding. In addition, the Proposed Findings of Fact and Conclusions of Law should demonstrate how Plaintiff has arrived at the proposed damages figure and should specifically tie the proposed damages to its legal claim(s) against Defendant.

4. Support for Requested Attorneys' Fees. Any request for attorneys' fees must be supported by contemporaneous time records authenticated by counsel and showing, for each attorney or other timekeeper, the date of service, the hours expended, the hourly rate charged (if applicable), and the nature of the work performed. Plaintiff must also submit admissible evidence identifying each attorney or other timekeeper and describing his or her background and qualifications, as well as evidence documenting Plaintiff's costs and expenses.

Plaintiff is further ORDERED that, prior to filing, Plaintiff shall serve Ecom by mail with Plaintiff's Proposed Findings of Fact and Conclusions of Law, together with supporting materials and a copy of this Order. Plaintiff shall file proof of such service along with its Proposed Findings of Fact and Conclusions of Law. See Local Civil Rule 55.2(c) ("[A]ll papers submitted to the Court pursuant to Local Civil Rule 55.2(a) or (b)" must be "mailed to the party against whom a default judgment is sought," and proof of such mailing "shall be filed with the Court.").

And it is further ORDERED that, no later than **April 25, 2025**, Ecom shall serve upon Plaintiff's counsel and file with the Court its responses, if any, to Plaintiff's Proposed Findings of Fact and Conclusions of Law and supporting materials.

The Court hereby notifies the parties that it may conduct the default judgment hearing and damages inquest based solely upon the written submissions of the parties. *See Finkel v. Romanowicz*, 577 F.3d 79, 87 (2d Cir. 2009) (Rule 55(b) "permit[s], but [does] not requir[e], a district court to conduct a hearing before ruling on a default judgment[.]"; *Action S.A. v. Marc Rich & Co.*, 951 F.2d 504, 508 (2d Cir. 1991) ("[A]ffidavits, evidence, and oral presentations by opposing counsel" constituted "sufficient basis from which to evaluate the fairness of the . . . sum" without the need for a separate hearing on damages); *Lenard v. Design Studio*, 889 F. Supp. 2d 518, 523-24, 526-27 (S.D.N.Y. 2012) (adopting the magistrate judge's report and recommendation on damages, issued after referral for inquest into damages following default judgment against the defendant, without an evidentiary hearing). To the extent any party seeks an evidentiary hearing, such party must set forth in its submission the reason why the inquest should not be conducted based upon the written submissions alone, including a description of what witnesses would be called to testify at a hearing, and the nature of the evidence that would be submitted.

DATED: December 17, 2024
New York, New York

SO ORDERED.



ROBYN F. TARNOFSKY
United States Magistrate Judge